

United States
Circuit Court of Appeals

For the Ninth Circuit.

14

W. E. DEAN, as Trustee in Bankruptcy of the
Estate of ROBERT E. SHEPHARD, a
Bankrupt,

Appellant,

vs.

ROBERT E. SHEPHARD,

Appellee.

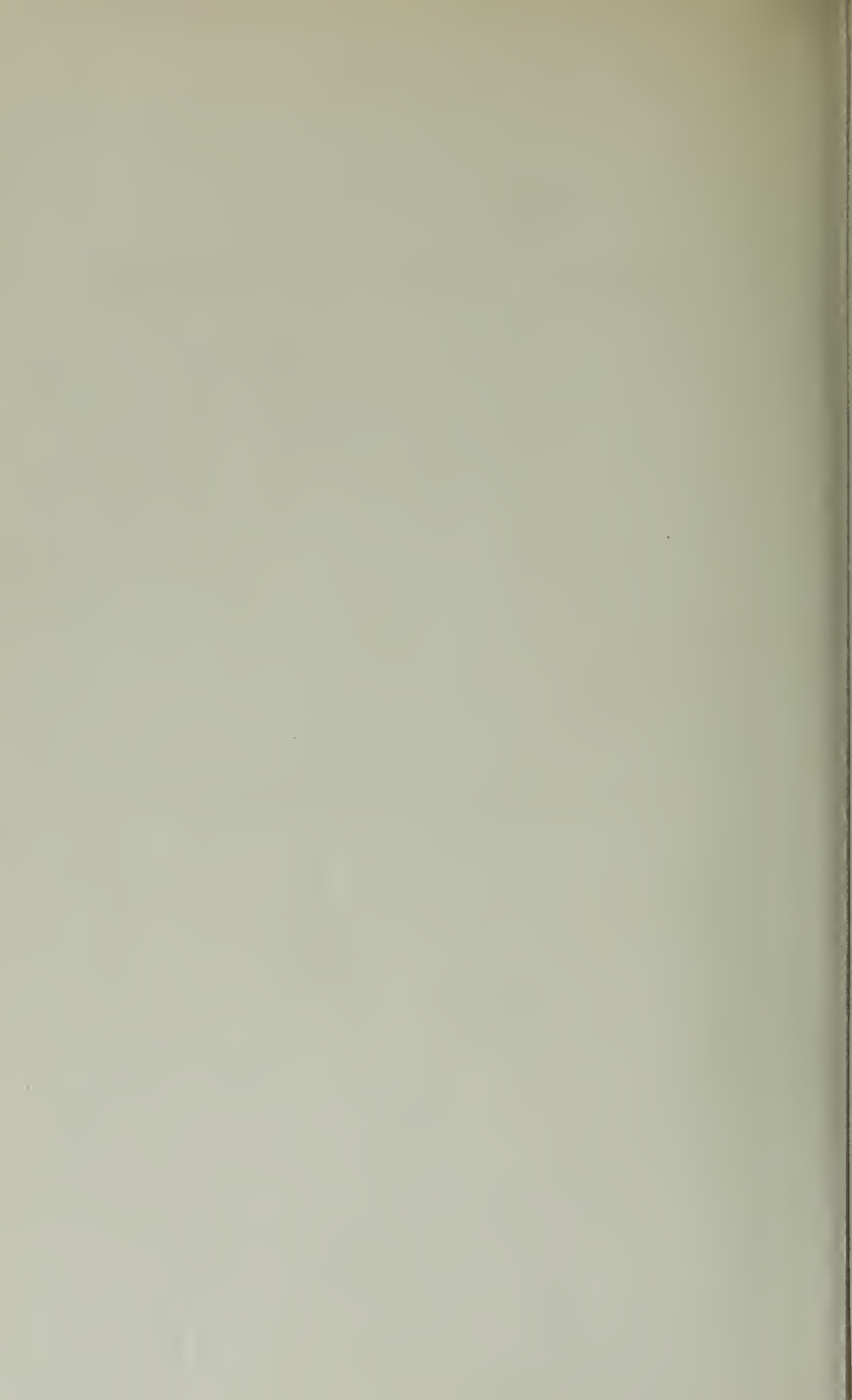
Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

OCT 31 1927

F. D. MONCKTON,
CLERK.



United States
Circuit Court of Appeals
For the Ninth Circuit.

W. E. DEAN, as Trustee in Bankruptcy of the
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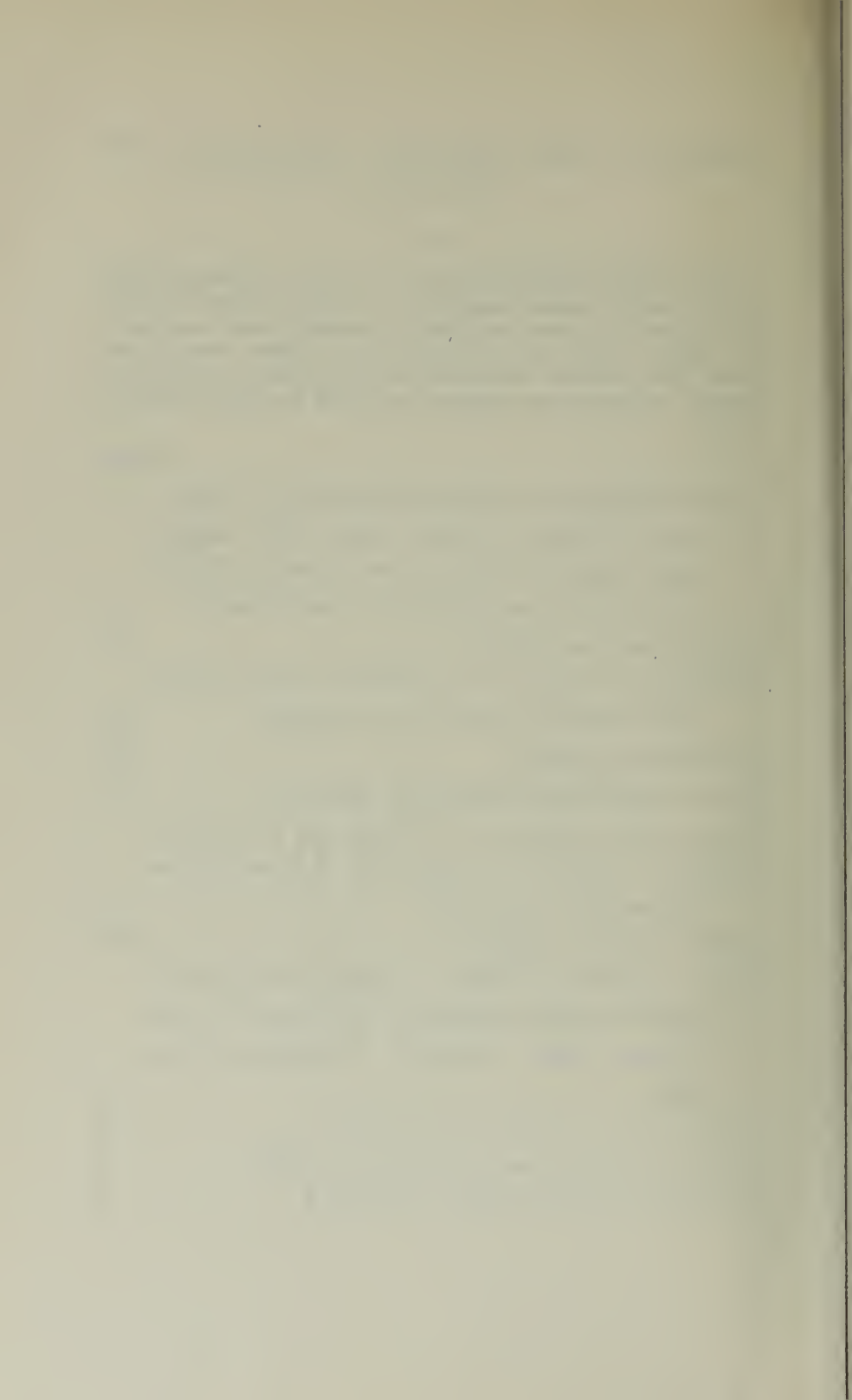
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Trustee and Appellant:

LAURENCE R. CHILCOTE, Esq., Builders
Exchange Bldg., Oakland, California.

For Bankrupt and Appellee:

W. E. RODE, Esq., Oakland Bank Bldg., Oak-
land, California.

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 15,789.

In the Matter of ROBERT E. SHEPHARD, Bank-
rupt.

W. E. DEAN, Trustee in Bankruptcy of the Estate
of ROBERT E. SHEPHARD, a Bankrupt,
Appellant,

vs.

ROBERT E. SHEPHARD, Bankrupt,
Appellee.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Southern Division of the United States District Court for the Northern District of California:

You will please prepare, certify and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit the following papers and records, as the record on appeal desired by the appellant.

1. Referee's order, dated June 9, 1927, on exemptions.

2. Bankrupt's petition for review of said order.

3. Agreed statement of facts.

4. Opinion of Referee on question of exemptions claimed by bankrupt.

5. Memo opinion and orders *re* review, dated August 29, 1927, of the Honorable United States Judge Bourquin.

LAURENCE R. CHILCOTE,
Attorney for Appellant. [1*]

Receipt of copy of the within praecipe for transcript of record and receipt of a copy thereof admitted this 27th day of September, 1927.

W. E. RODE,
Attorney for Appellee.

[Endorsed]: Filed Sep. 27, 1927, at 4 o'clock P. M. [2]

*Page-number appearing at the foot of page of original certified Transcript of Record.

[Title of Court and Cause.]

ORDER ALLOWING CERTAIN PROPERTY
AS EXEMPT AND DIRECTING BANK-
RUPT TO TURN OVER TO TRUSTEE
OTHER PROPERTY CLAIMED AS EX-
EMPT.

W. E. Dean, Trustee in Bankruptcy herein, having filed his report of exempt property on May 10th, 1927; and, having filed on May 11th, 1927, his verified petition praying for an order to show cause to be issued herein, directed against said bankrupt, requiring him to show cause before this court at a time and place certain why an order should not be made and entered directing said bankrupt to turn over and deliver, certain property now in his possession and which he claims to be exempt, to the trustee herein to be administered as part of the above estate; and said order having been issued as prayed; and, the matter having been heard at the time and place specified, and at other hearings to which the matter was regularly continued; and, having considered the testimony taken herein, the record, the briefs submitted by respective counsel for the trustee and the bankrupt, and due deliberation having been had, it is hereby

ORDERED, ADJUDGED AND DECREED, that said trustee's report of exempt property be, and the same hereby is, in all things confirmed, and the bankrupt's claim to exemption is hereby determined accordingly respecting the property more

particularly described in paragraphs 2 and 3 found on page 5 of bankrupt's schedule B, to wit:

Paragraph 2, bankrupt's schedule B (5),
 1 desk and chair, necessary household table
 and kitchen furniture, including one
 sewing machine, stove and furniture,
 wearing apparel, beds and bedding,
 and one piano \$250.00

Paragraph 3, bankrupt's schedule B (5),
 The tools and implements of petitioner
 necessary to carry on his trade as an
 auto body mechanic consisting of anvil,
 forge and miscellaneous hand tools,
 electric drill, sewing-machine, acetylene
 welding outfit \$125.00

[3]

and that said property be set apart to said bankrupt as exempt from the operation of the Acts of Congress relating to bankruptcy.

And it is FURTHER ORDERED, ADJUDGED AND DECREED that the bankrupt turn over and deliver to the trustee herein, forthwith, the property referred to in paragraph 5 found on page 5 of bankrupt's schedule B, to wit:

Paragraph 5, bankrupt's schedule B (5),
 1 band saw, power and motor, post drill and
 motor and emery stand, being the prop-
 erty referred to in schedule A (2).... \$400.00
 said property being more particularly described as follows, to wit:

1-36-inch band saw (power driven),
 1-12-inch joiner (power driven),

1-1/2-inch post drill (power driven),
1-emery-wheel (power driven),
together with the electric motors and power transmission equipment, to wit:

- 1-2-horsepower motor,
- 1-5-horsepower motor,
- 1-countershaft, with 4 pulleys and 2 hangers,
- 1-3 1/2-inch belt,
- 1-4-inch belt,
- 2-Wells Norris motor starting switches.

said property having been heretofore claimed by the bankrupt as exempt, but which the trustee herein is hereby authorized and directed to assume control of for the benefit of the estate of the bankrupt herein.

Dated: June 9, 1927.

BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed June 10, 1927, at 4:45 o'clock
P. M. [4]

[Title of Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER.

Comes now Robert E. Shephard, bankrupt above named, and alleges that petitioner was a party to the following certain proceedings in said bankruptcy pending before Burton J. Wyman, Esq., as the Referee in Bankruptcy in charge thereof, to wit:

On the hearing of order directing said defendant to show cause why he should not be required to turn over to W. E. Dean, as trustee in said matter, certain tools and equipment to be administered in the above-entitled proceeding for the benefit of said estate; at the conclusion of said hearing, to wit, on June 9, 1927, an order was made that said trustee's report of exempt property be confirmed and that bankrupt turn over and deliver to said trustee forthwith the following described tools and implements: 1-36-inch band saw, 1-12-inch joiner, 1-1/2-inch post drill, 1 emery-wheel, together with 1-2-HP. motor, 1-5-HP. motor, and the following transmission equipment; 1 countershaft, with 4 pulleys and 2 hangers, 1-3 1/2-inch belt, 1-4-inch belt and 2-Wells Norris motor starting switches.

That said order further directed said trustee to assume control of said tools and implements for the benefit of the estate of said bankrupt and to which order petitioner duly excepted.

Said order is erroneous in this: That said property directed to be turned over by said bankrupt to said trustee was and is claimed by said bankrupt as exempt and the same constitute tools and implements of said bankrupt necessary to carry on his his trade, to wit: that of automobile body mechanic, and the same are therefore exempt under the provisions of subdivision 4 of section 690 of the Code of Civil [5] Procedure of the State of California and under the Acts of Congress relating to bankruptcy and said tools and implements should

therefore have been set apart to said bankrupt as exempt.

WHEREFORE petitioner prays that said order be reviewed and that the same be modified in that said tools and implements so directed to be delivered and turned over to the trustee herein be declared exempt and that said trustee be declared to have no interest therein and the petitioner be restored to all things that he has lost by reason of said error.

ROBERT E. SHEPHARD,
Petitioner on Review.
W. E. RODE,
Attorney for Petitioner. [6]

State of California,
County of Alameda,—ss.

Robert E. Shephard, being duly sworn, says: That he is the petitioner named in the above-entitled matter; that he has read the foregoing petition for review and knows the contents thereof; that same is true of his own knowledge except as to matters therein stated on information and belief, and as to such matters that he believes it to be true.

ROBERT E. SHEPHARD.

Subscribed and sworn to before me this 16th day of June, 1927.

[Seal] W. E. RODE,
Notary Public in and for the County of Alameda,
State of California.

[Endorsed]: Filed June 16, 1927, at 1:15 P. M.
[7]

[Title of Court and Cause.]

AGREED STATEMENT OF FACTS SUBMITTED ON HEARING OF ORDER TO SHOW CAUSE WHY BANKRUPT SHOULD NOT TURN OVER CERTAIN PROPERTY CLAIMED AS EXEMPT TO THE TRUSTEE.

It is hereby stipulated and agreed that the following was the testimony produced on the hearing of the order directing said defendant to show cause originally set for hearing for May 11, 1927, and continued from time to time regularly to June 9, 1927, why he should not be required to turn over to W. E. Dean, as trustee in bankruptcy, the tools and equipment below referred to, to be administered in the above-entitled proceedings for the benefit of the above-entitled estate, to wit:

That the bankrupt was and is an auto body mechanic and had followed that trade exclusively and continuously for more than fifteen years last past and up to the present time; that at the time of filing his petition in bankruptcy he was engaged in carrying on his said trade at 4166 Broadway, Oakland, working for himself and having his own place of business, and at that time and for some four months previously was carrying on his trade by himself and alone and had no other mechanics or men working for him; that previously at various times he had an average of two or three auto body mechanics in his employ but that he never at any

time had more than four such mechanics working for him.

That at the time of filing his petition in bankruptcy the bankrupt was using in his said trade and claimed as exempt the following tools and implements, to wit: [8]

1-12" joiner with 2-HP. direct drive motor attached.

1-36" band saw connected up with 1/2" post drill and an emery-wheel and driven by a 5-HP. motor;

and the following transmission equipment:

1 countershaft with 4 pulleys and 2 hangers,
1-3 1/2" belt, 1-4" belt, 1-2" belt, 2 Wells-Norris motor starting switches.

That a journeyman auto body mechanic when working for another is not required to furnish such band saw, joiner, drill or emery-wheel but the same are usually furnished by the establishment for which he works; that the bankrupt could not and cannot carry on his trade as an auto body mechanic under present-day conditions without the use of said implements driven by electric motors; that the peculiar nature of auto body work, that is, repairing and rebuilding auto bodies requires the use of said power driven implements because woodwork in auto bodies is hardwood and generally is fitted in curving lines conforming with the outward lines or appearance of an auto body and for those reasons it is practically impossible to cut same out and finish same with an ordinary hand saw or hand tools and that to undertake to do so would render

the labor so costly that a mechanic could not successfully carry on his trade; that such band saw, joiner, drill and emery-wheel with said motors to drive same are part of the ordinary equipment of an auto body mechanic who carries on his trade as such and is the minimum equipment with which an auto body mechanic can successfully carry on his trade; that without said equipment an auto body mechanic cannot carry on that trade for himself.

That the bankrupt was not at the time of the filing of his petition in bankruptcy and at no time has been a manufacturer of auto bodies but that his work as auto body mechanic has been confined to the rebuilding and repairing of auto and commercial bodies and the occasional making of commercial bodies for trucks or delivery autos on special orders and specifications for each job, as a jobbing shop; and that the bankrupt has never produced the same except on special orders. [9]

Testimony of both the bankrupt and Expert Sours, produced on behalf of the bankrupt, was that an auto body mechanic was not expected to furnish said equipment when working as an employee or journeyman at his trade. Expert Sours testified that although he has been employed as an auto body mechanic for a long time, admitted that he had never owned or supplied said equipment. Both witnesses testified that said property was power driven.

Both the bankrupt and his expert, Mr. Sours, testified on direct examination that said power

machinery or equipment was necessary. On cross-examination Mr. Sours testified that he had been employed by the bankrupt for a long time as an auto body mechanic; that he was familiar with the work done by the bankrupt; that the month of August, 1926, was the best month they ever had. He was read the job record for the month of August, 1926, and was unable to pick out a job which required the use of the same as necessary to complete said job. The job record showed the jobs performed during the months of June, July and August, 1926, their best months, as being repairing side curtains, putting in new celluloids, repairing fenders, straightening fenders, etc., jobs which Mr. Sours admitted did not require the use of the same. The bankrupt testified on cross-examination: When given the job record, and asked to pick out a job performed during July or August, 1926, and which required the use of the same to complete, he was unable to find one. He found one job in June, 1926, that of *building* a Type B Survey Body for the U. S. Department of Agriculture, which he said required the use of the same.

LAURENCE R. CHILCOTE,
Attorney for Said Trustee.
W. E. RODE,
Attorney for Said Bankrupt.

[Endorsed]: Filed June 16, 1927, at 1:15 P. M.

[Title of Court and Cause.]

OPINION OF REFEREE ON QUESTION OF
EXEMPTIONS CLAIMED BY BANK-
RUPT.

The bankrupt herein is an automobile top maker. Because he claims them as the tools or implements of his trade, he asks that the following described personal property be set aside as exempt:

- 1-36-inch band saw (power driven),
- 1-12-inch joiner (power driven),
- 1-1/2-inch post drill (power driven),
- 1-emery-wheel (power driven),
- together with the electric motors and power transmission equipment, to wit:
- 1-2-horsepower motor.
- 1-5-horsepower motor,
- 1-countershaft, with 4 pulleys and 2 hangers,
- 1-3 1/2-inch belt,
- 1-4-inch belt,
- 2-Wells Norris motor starting switches.

The claim of the bankrupt in this regard is based on section 690, subdivision 4 of the Code of Civil Procedure of the State of California, which, taken with the introductory part of said provision of said law, reads as follows:

The following property is exempt from execution 4. The tools or implements of a mechanic or artisan, necessary to carry on his trade.

It is the contention of the trustee herein, that the articles hereinbefore referred to do not fall within the category of "tools or implements," but, in fact, consist of "power machinery," and hence cannot be set apart to the bankrupt as exempt under the provisions of the statute under discussion. [11]

On behalf of the bankrupt, it is conceded that said personal property is power machinery. It is asserted, however, that since it is "necessary to carry on his trade," the section of the California law dealing with the "tools or implements of a mechanic or artisan" is broad enough to take in the articles in question and therefore the trustee should set them apart as exempt.

After a careful study of the authorities submitted by counsel on both sides, I am of the opinion that the bankrupt's contention cannot be upheld. In taking this position, I am not unmindful of the positive language used by the California Supreme Court In re McManus, 87 Cal. 292, at page 294, wherein it was said:

Statutes exempting personal property from forced sale are remedial in character, and are evidently intended to protect the debtor, and enable him to follow his vocation, and thus earn support for himself and family. The general rule now is that such statutes are to be liberally construed, so as to effectuate the humane purpose designated by the lawmakers, and our Code of Civil Procedure declares that all of its provisions are to be so construed

“with a view to effect its objects and to promote justice.” (Sec. 4.)

Nevertheless in determining exactly what articles are exempt, I take it that I am to be guided by the legislative intent as declared in the statute under discussion, and any decisions of the court, state or federal, which are interpretative thereof. I am well aware of the rule whereby I am bound to follow the dictates of the higher courts of California wherever they have construed the statute concerning exemptions, if there be any such decisions bearing upon the question. After an exhaustive research, however, I have been unable to find a single case where the California Supreme Court, or any of its Appellate Courts, has passed upon the subdivision of section 690 Code of Civil Procedure [12] in which the question as to whether or not “power machinery” would be included within the term “tools or implements” of a “mechanic” or “artisan.”

Counsel for bankrupt is very insistent that In re Klemp, 119 Cal. 41, wherein a combined harvester was set apart as exempt, is determinative of the question herein involved, and consequently the objection that “power machinery” cannot be included within the category of “tools and implements” is not a valid objection *the* the setting apart of the said tools herein claimed by said bankrupt.

It is to be observed, however, that the last mentioned decision was not rendered as interpretative of subdivision 4 of section 690 Code of Civil Procedure, but simply is the declaration of the Cali-

ifornia Supreme Court in placing a construction on subdivision 3 of said section, which taken with the introductory portion of said section reads as follows:

“The following property is exempted from execution or attachment 3. The farming utensils or implements of husbandry of the judgment debtor ”

In all candor, I admit, that had I no other means of guidance, in spite of the fact that the decision just referred to is not intended to construe the particular subdivision here under discussion, and involves an entirely different combination of terms, I would be very much inclined to accept said decision as the law of this case, and find in favor of the bankrupt. This I cannot do however, and for this reason:

The California Supreme Court determined *In re Klemp, supra*, on the 9th day of November, 1897. In 1899, the legislature added subdivision 17 to section 690, Code of Civil Procedure; so much thereof as is necessary to [13] illustrate the point here under discussion reads as follows:

“All machinery, tools and implements necessary for boring wells ”

Manifestly, in the legislative mind, there was a clear-cut distinction between the meaning of the words “machinery” and “tools and implements.”

This being so, it necessarily follows that had the legislature intended that the “machinery” of a “mechanic” or “artisan” should come within the purview of the particular subdivision of the section

herein involved, it would have so declared in no uncertain terms, and having failed to do so, the word or words necessary to give the broad construction here *contained* for by the bankrupt should not be imported into the statute. In the use of the language just immediately foregoing, I have in mind the decision of Dooling, D. J., In the Matter of William Wilder, Bankrupt, 35 Am. Bank. Rep. 319, wherein it was held that a taxicab does not fall within the provisions of section 690 of the Code of Civil Procedure, holding as exempt certain vehicles of hackmen, etc., and wherein the learned Judge in passing upon the question there involved, said that

“ while those provisions are to be construed liberally, yet the court is not warranted in creating by interpretation new exemptions.”

and also the further language used by James, J., in *Crown Laundry & Cleaning Company (a Corporation) vs. G. E. Cameron*, 39 Cal. App. Rep. 617, at pg. 618, wherein he said, in referring to exemptions:

“For the courts to add to the Statute any articles *no* enumerated, would in effect be judicial legislature.”

It is therefore my opinion, that the hereinbefore [14] mentioned property is not exempt, and that the trustee herein, as such, is entitled thereto.

Dated: June 9th, 1927.

BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed June 9th, 1927, at 55 minutes past 4 o'clock P. M. [15]

[Title of Court and Cause.]

(MEMO OPINION AND ORDER RE REVIEW.)

The petition for review of the Referee's order *in re* exemptions is sustained, the order is reversed and the claim of exemption sustained and granted.

It is apparent that the tools or implements involved are what may be termed "one-man" tools or implements. That is, they are appropriate to use by one mechanic and generally so used, though power driven.

There is nothing in this remedial statute limiting the mechanic to hand tools, denying to him the benefit of development and improvement in his craft.

Were it a case of a shop filled with tools to each *employ* or require several men to operate, machinery and a machine-shop rather than tools and a mechanic's place of labor, the rule would be otherwise.

August 29, '27.

BOURQUIN, J.

[Endorsed]: Filed Aug. 30, 1927, at 10 o'clock and 10 min. A. M. [16]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO CERTAIN DOCUMENTS FOR
USE ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 16 pages, numbered from 1 to 16, inclusive, contain a full, true and correct transcript of certain documents in the above-entitled matter as requested in praecipe of appellant on file herein, the originals of which are on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript is the sum of eight dollars and five cents (\$8.05), and that the same has been paid by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of October, A. D. 1927.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [17]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of ROBERT E. SHEPHARD, Bank-
rupt.

W. E. DEAN, Trustee in Bankruptcy of the Es-
tate of ROBERT E. SHEPHARD, a Bank-
rupt,

Petitioner,

vs.

ROBERT E. SHEPHARD, Bankrupt,

Respondent.

PETITION FOR ALLOWANCE OF APPEAL.

To the United States Circuit Court of Appeals for
the Ninth Circuit:

Your petitioner, W. E. Dean, feeling aggrieved
by the decision and order made in the above-entitled
matter by the United States District Court for
the Northern District of California, on August
29, 1927, and filed August 30, 1927, granting the
bankrupt's petition for review and reversing that
certain order of Burton J. Wyman, Esquire, Ref-
eree in Bankruptcy, in the above-entitled matter,
made June 9, 1927, denying the bankrupt's claim
of exemption to certain power machinery as tools
and implements of a mechanic necessary to carry
on his trade, and sustaining and granting the bank-
rupt's claim of exemption thereto,

Comes now by his undersigned attorney and petitions that a appeal be allowed from said order to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States, in that behalf made and provided, and, if said petitioner, as trustee in bankruptcy, is required to give bond, an order be made fixing the amount of said bond.

LAURENCE R. CHILCOTE,
Attorney for Petitioner.

Receipt of a copy is hereby admitted this 27th day of September, 1927.

W. E. RODE,
Attorney for Respondent.

ORDER ALLOWING APPEAL.

The foregoing appeal is hereby allowed this 27th day of September, 1927.

W. H. HUNT,
United States Circuit Judge, Ninth Circuit.

[Endorsed]: Petition for Allowance of Appeal. Filed Sep. 28, 1927. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of ROBERT E. SHEPHARD,
Bankrupt.

W. E. DEAN, Trustee in Bankruptcy of the Es-
tate of ROBERT E. SHEPHARD, a Bank-
rupt,

Petitioner,

vs.

ROBERT E. SHEPHARD, Bankrupt,
Respondent.

ASSIGNMENTS OF ERROR.

Comes now W. E. Dean, the petitioner above named, and makes and files the following assignments of error upon which he will rely in the prosecution of his appeal in the above-entitled matter.

I.

That the United States District Court for the Northern District of California erred in making and entering its decision and order on August 29, 1927, reversing the order made June 9, 1927, by the Referee in Bankruptcy in the above-entitled matter, denying the bankrupt's claim of exemption to certain power machinery as tools or implements of a mechanic necessary to carry on his trade, and sustaining and granting the bankrupt's claim of exemption thereto.

II.

That said Court erred in finding said power machinery to be the tools or implements of a mechanic necessary to carry on his trade, in that said finding was against the weight of evidence and inconsistent with the agreed statement of facts.

III.

That said Court erred in law in granting the petition for review, reversing the Referee's order and making its order sustaining and granting the bankrupt's claim of exemption, for the reason that said power machinery does not come within the purview of subdivision 4 of section 690 of the Code of Civil Procedure of the State of California.

WHEREFORE, said petitioner prays that the said order of the above-entitled court made on August 29, 1927, be reversed, and that the said court be instructed to make and enter its order sustaining and confirming the said order made by the said Referee in Bankruptcy on June 9, 1927, and denying said power machinery as exempt.

LAURENCE R. CHILCOTE,

Attorney for Petitioner.

Receipt of copy of the within assignment of error is hereby admitted this 27th day of September, 1927.

W. E. RODE,

Attorney for Respondent.

[Endorsed]: Assignments of Error. Filed Sep-28, 1927. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to Robert E. Shephard, a Bankrupt, and to W. E. Rode, His Attorney, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein W. E. Dean, Trustee in Bankruptcy of the Estate of Robert E. Shephard, a bankrupt, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT, United States Circuit Judge for the Ninth Circuit, this 27th day of September, A. D. 1927.

WM. H. HUNT,
United States Circuit Judge.

United States of America,—ss.

On this 19th day of October, in the year of our Lord one thousand nine hundred and twenty-seven, personally appeared before me Laurence R. Chil-

cote, the subscriber, and makes oath that he delivered a true copy of the within citation to Walter E. Rode, attorney for appellee, at Oakland, California, on the 19th day of October, 1927.

LAURENCE R. CHILCOTE.

Subscribed and sworn to before me at San Francisco, this 21st day of October, A. D. 1927.

[Seal]

FRANK H. SCHMID,

Deputy Clerk, United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Citation on Appeal. Filed Oct. 22, 1927. F. D. Monckton, Clerk.

[Endorsed]: No. 5282. United States Circuit Court of Appeals for the Ninth Circuit. W. E. Dean, as Trustee in Bankruptcy of the Estate of Robert E. Shephard, a Bankrupt, Appellant, vs. Robert E. Shephard, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed October 18, 1927.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.